IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 319 of 2005

1. Sunita Pande D/o Urba Dutt Pande
2. Urba Datt Pande S/o Chinta Mani
3. Prakash Bhatt S/o R.B. Bhatt,
   All C/o R.B. Bhatt, Plot No. 4-5,
   Vernon Cottage Compound,
   Tallital, Nainital. …. Applicants

Versus

1. State of Uttaranchal
2. Judicial Magistrate, Nainital.
3. Sri Devki Nandan Bhatt,
   S/o Sri Revadhar Bhatt,
   R/o Plot No. 7A Vernon Cottage Compound,
   Tallital, Nainital. … Respondents

Mr. S.N. Babulkar, Senior Advocate assisted by Mr. Tumul Nailwal, Advocate for the applicants.
Mr. P.B. Goswami, Advocate for respondent No. 3.

Hon'ble J.C.S. Rawat, J.

This is a petition filed under Section 482 of the Code of Criminal Procedure with a prayer to quash the summoning order dated 16.12.2003 (Annexure 4) and entire proceedings of Criminal Case No. 173 of 1999 Devki Nandan Bhatt Vs. Smt. Sunita Pande and others pending in the Court of Judicial Magistrate including the complaint and further to quash the impugned order dated 21.05.2005 (Annexure 7).

A written complaint was filed before the learned Magistrate against the petitioners/ applicants under Section 341, 504, 506, 147, 290, 120(B) of the Indian Penal Code. The learned Chief Judicial Magistrate examined the complainant Devki Nanda Bhatt under Section 200 Cr.P.C. and the witness, namely, Ganesh Datt was examined under Section 202 Cr.P.C. Thereafter, the cognizance was taken by the Magistrate on 06.04.2000. Feeling aggrieved by the said order, a petition under Section 482 Cr.P.C. was filed before this Court. The Court quashed the impugned order dated 06.04.2000 passed by

the learned ACJM, Nainital in Criminal Case No. 173 of 1999 and the case was remanded back to the learned Magistrate to proceed in the matter in the light of the observations made in the judgment. It was directed by the High Court as follows:

> "In view of the above the impugned order dated 06.04.2000 passed by learned ACJM, Nainital in criminal case no. 173 of 1999 is set aside. The case is remanded to the learned Magistrate to proceed in the matter in the light of the observations made above and then to pass an appropriate order."

Thereafter, the case was taken up by the Trial Court and ultimately, a cognizance order was passed by the learned Magistrate on 16.12.2003. Feeling aggrieved by the said order dated 16.12.2003, the present petition has been filed before this Court.

Learned counsel for the petitioners / applicants has contended before this Court that the summoning order passed by the learned Trial Court is in gross violation of the order passed by the High Court, in as much as, the whole text of the summoning order is based merely on the contents of the complaint and no proof was made from the prosecution evidence to find out the truthfulness of the allegations. Learned counsel further contended that the present summoning order was passed in utter violation of the procedure laid down in the Code of Criminal Procedure. Learned counsel for respondent No. 3 refuted the contentions.

I have gone through the entire record. In **M/s Pepsi Foods Ltd. and another Vs Special Judicial Magistrate and others** reported in **JT 1997(8) SC 705,** it has been held as under:

> "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused

> must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The above proposition of law clearly emphasizes that the Magistrate, while taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant. The learned Magistrate on 21.08.2002 was of the opinion that pursuant to the direction of the High Court the complainant and the witnesses were required to be re-examined under Sections 200 and 202 Cr.P.C. particularly in the light of the civil litigation pending between them. The order clearly reveals that the learned Magistrate, although subsequently recorded the statement under Section 200 Cr.P.C., but as far as the statements under Section 202 Cr.P.C. are concerned, such statements were never recorded afresh. The file further reveals that the learned counsel for the opposite parties argued before the learned Magistrate that there is no provision in law to recall the witness under Section 202 Cr.P.C. already recorded under Section 202. On that assumption, the learned Magistrate, without going through the order dated 21.08.2002, passed the cognizance order. In pursuance of the Court's order, the documents pertaining to civil litigation were filed before the Trial Court. The statement was recorded before the court below under Section 200 Cr.P.C. and the complainant has deposed with regard to the civil litigation. The deposition did not indicate as to whether the questions were put to the complainant by the Court or it was made at the behest of the complainant. Learned counsel for respondent No. 3 pointed out that the said questions were put to the witness by the

Magistrate himself. Learned counsel for the applicant contended that these questions were not put by the Court himself. The examination was conducted at the behest of the complainant. The procedure for recording the statement is that if the examination is made by the Court, it should be written at the top of the deposition that it was made by the court. The Trial Court on 21.08.2002 adjourned the case hoping that the witnesses recorded under Section 202 Cr.P.C. are to be re-examined. But later on these witnesses were not examined by the Trial Court. As such, the procedure adopted by the Trial Court is irregular.

Hence, the learned Trial Court is directed to re-examine the witnesses under Sections 200 and 202 Cr.P.C. and to put the questions to them with regard to the civil litigation and thereafter to pass order after verifying the truthfulness of the allegations or otherwise. I am of the view that the learned Magistrate has failed to exercise his jurisdiction under Section 204 of the Code with propriety and therefore, the impugned order cannot be legally sustained. As a result thereof the petition succeeds and is allowed.

In view of the above, the impugned order dated 16.12.2003 passed by the learned Chief Judicial Magistrate, Nainital is set aside. The case is remanded back to the Chief Judicial Magistrate to proceed in the matter in the light of the observations made above and then, to pass appropriate order. The complainant is directed to appear before the Chief Judicial Magistrate, Nainital on 21st September, 2005.

(J.C.S. Rawat, J.)

24.08.2005
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